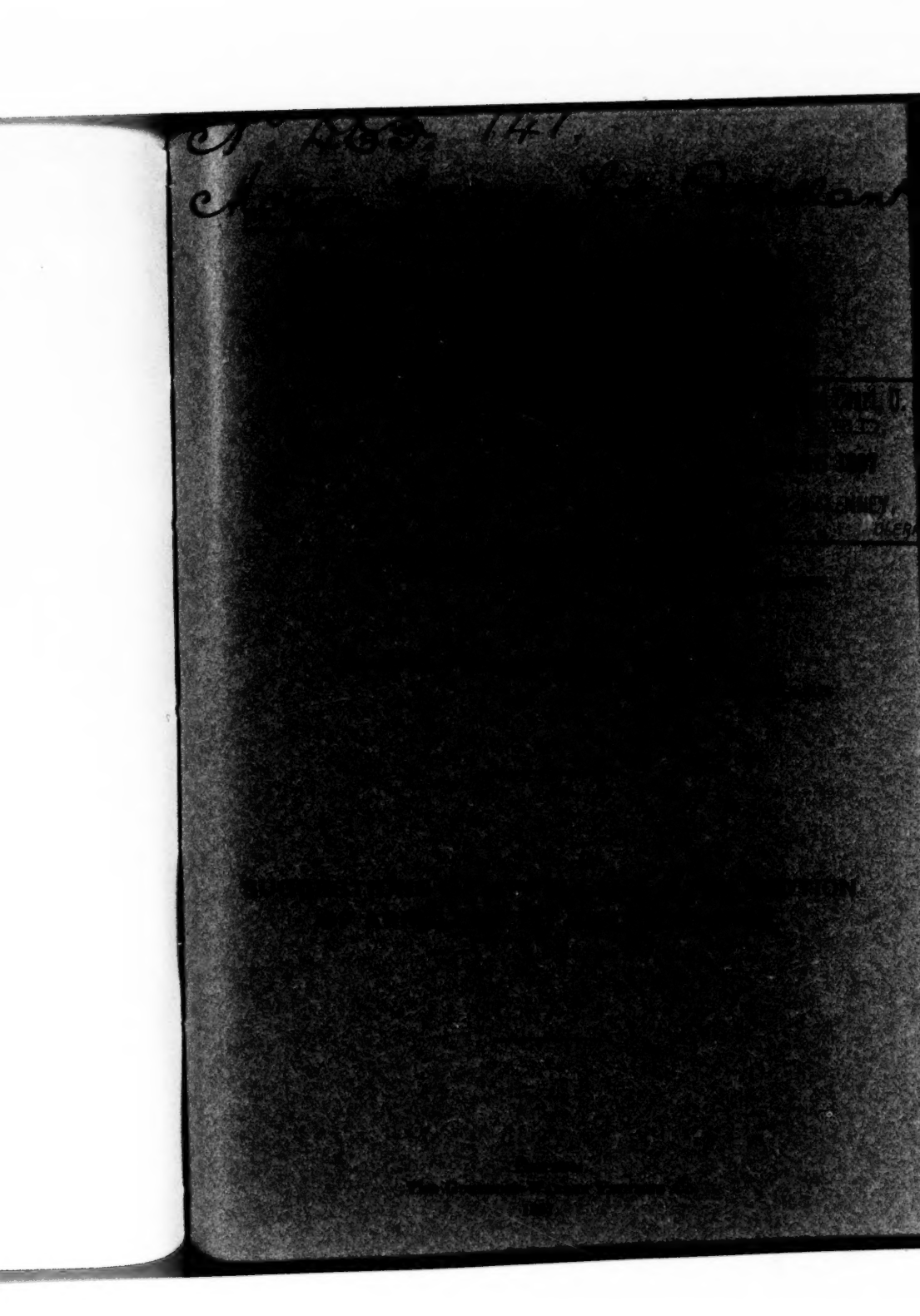

In the Supreme Court of the United States.

Pullman's Palace Car Company, Appellant,	October Term, 1896.
vs.	No. 463.
Central Transportation Company, Appellee.	Record, No. 16,212.

SUGGESTIONS ON BEHALF OF APPELLANT.

In respect of this motion, the appellant submits the whole matter to the convenience and pleasure of the court. It interposes no objection to the action of the court sought by the petition filed in support of the motion; but it strenuously objects to the aspect in which the subject is presented and to the point of view from which the court is invited to survey it.

The petition represents that there are *special and peculiar* circumstances which constitute grounds of the motion, and that these are: "That the bill was filed in this case by the present appellant on the 15th day of April, 1887; * * * that the proceedings in *this* case have, without the fault of the appellee, been greatly protracted;

* * * so that it is now nearly ten years, since the commencement of the proceedings," etc.

We recall to the consideration of the court that while the original bill, which was filed as stated on the 15th of April, 1887, was pending, every detail of its subject-matter was completely disposed of by the judgment of this court in *Central Trans. Co.* v. *Pullman's Pal. Car Co.*, on the 2d day of March, 1891. (139 U. S., 24.) There remained then no question which could be litigated under that bill between the parties, and no subject upon which complainant sought relief.

Accordingly, in April, 1891, *six years ago*, the complainant moved for the dismissal, at its own cost, of the original bill; and the litigation which it instituted should have ended then. The appellee contested the dismissal of the bill, and procured it to be retained against the will of the complainant. It was retained for the purpose of giving support in *that* forum to a co-called cross-cause instituted by appellee. Nothing has been done since that time *except under that cross-bill* of the appellee. The appellant prosecuting no claim, seeking no relief for the last six years, except to get out of that forum in which it had filed its bill, and to terminate its suit according to the judgment of this court, disclaims the reproach ingeniously wrought into the subtle statement that *this* case was begun by the appellant in 1887; that it has been "*without fault of the appellee* greatly protracted"; "so that it is now nearly ten years since the commencement of the proceedings," etc. This proceeding is distinctively a suit begun by the appellee after the above-mentioned judgment of this court was rendered in 1891, and is founded on conditions that had their origin only under that judgment. This suit we have defended, as it was our proper right

and, as we conceive, our moral duty to do. With this rectification of the attitude of the respective parties we submit the matter as we have above stated to such action upon the motion as the court may approve.

EDWARD S. ISHAM,
Of Counsel for Appellant.

A. H. WINTERSTEEN,
ROBT. T. LINCOLN,
EDWARD S. ISHAM,
JOSEPH H. CHOATE,
Of Counsel for Appellant.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1896. No. 463.

Pullman's Palace Car Company, Appellant,

vs.

Central Transportation Company, Appellee.

MOTION TO DISMISS APPEAL AND BRIEF IN SUPPORT THEREOF.

MOTION.

The Central Transportation Company, appellee in the above case, moves this Honorable Court to dismiss the appeal on the ground that the record discloses no questions which would give this court jurisdiction to entertain an appeal under the Act of March 3d, 1891.

CONCISE STATEMENT OF THE CASE.

The following report of the case in 72 Federal Reporter, 211, is reprinted in full as containing a concise statement of the facts, arguments and opinions.

CIRCUIT COURT, EASTERN DISTRICT PENNSYLVANIA.

Pullman's Palace Car Company

vs.

Central Transportation Company.

Central Transportation Company

vs.

Pullman's Palace Car Company.

January 14th, 1896.

1. ULTRA VIRES LEASE—RESTITUTION—LOSS OF IDENTITY OF PROPERTY—MEASURE OF COMPENSATION.

A sleeping-car company, operating a system of lines, leased the cars, contracts, &c., of another company, operating another system, and thereupon so merged and absorbed the plants of both companies into an entire system, by substitution of cars and of new contracts in its own name, that the identity of the plant of the lessor company was destroyed, and the plant itself could not be returned. After fifteen years' possession the lessee company, without returning the property, repudiated the lease on the ground that it was *ultra vires* and void, and successfully defended on that ground against a suit for rental. In a proceeding in equity to compel the lessee company to make compensation for the property so appropriated, *held*, that the lessee company must pay the value of the property leased, as a whole, including contracts, and not merely the value of the tangible property, such as cars and equipments.

2. SAME.

Held, further, that a valuation at a sum not above the selling price of the stock of the lessor company was not excessive.

3. SAME. RENTALS AND EARNINGS—PRESUMPTIONS.

Held, further, that as the lessee company had failed to furnish the information necessary to ascertain whether the earnings before the repudiation of the lease had been greater or less than the rental paid, the presumption was that the rent and earnings balanced each other, and that as the evidence justified the presumption that up to the time of repudiation the property had increased, rather than decreased, in value, a decree should be entered for the value found by the Master, with interest from the time of repudiation.

HEARING ON EXCEPTIONS TO REPORT OF MASTER.

This was a bill in equity by Pullman's Palace Car Company against the Central Transportation Company, and a cross bill by the Central Transportation Company against Pullman's Palace Car Company. The two companies, plaintiff and defendant, had been sleeping-car companies, of about the same size, but occupying different territories; the Central Transportation Company operating a system of lines from St. Louis east to the Atlantic, and Pullman's Palace Car Company operating a system of lines from Buffalo west to the Pacific. Negotiations entered into for consolidation resulted in a lease of the Central Transportation Company by Pullman's Palace Car Company for ninety-nine years, under a Pennsylvania statute specifically drawn by counsel for that purpose and passed by the legislature. After the lease had been in operation fifteen years, and after the Central Transportation Company's property had been so absorbed into the Pullman system that identification and separation had become impossible, the two companies quarreled over a clause of the lease. The Central Transportation Company brought suit at law to recover accruing installments of rent, and Pullman's Palace Car Company filed the present bill, alleging that the lease had been terminated by it under a clause reserving that right, and that in any event it was originally invalid; alleging further that it was impossible to return the property, and asking the court to enjoin the suits at law, and ascertain what would be an equitable compensation for the property. The court granted an injunction against suits at law for further rental, but refused to interfere with pending suits for rental previously accrued. Pullman's Palace Car Company thereupon set up as a defense to one of these pending suits at law the claim already made in the bill in equity, viz., that the lease itself was invalid. This defense the court sustained, and its decision was affirmed on appeal. Central Transp. Co. vs. Pullman's Palace Car Co., 139 U. S., 24; 11 Sup. Ct., 478. Thereupon Pullman's Palace Car Company asked leave to dismiss the present bill, in which it had asked the court to fix

the compensation to be paid for the property in lieu of its return; and the Central Transportation Company opposed this motion, and asked leave to file a cross bill praying for compensation for the property taken. The motion to dismiss was refused, and leave was granted to file the cross bill. Pullman's Palace Car Co. vs. Central Transp. Co., 49 Fed., 261. Issue being joined, testimony was taken, and the cause heard on bill, answer and proofs, with the result that a decree was entered in favor of the Central Transportation Company, and the cause referred to Theodore M. Etting, as Master, to ascertain the value of the property. Pullman's Palace Car Co. vs. Central Transp. Co., 65 Fed., 158.

The Master reported that the Central Transportation Company was incorporated December 30th, 1862, for twenty years, originally with a capital of $200,000, which from time to time had been increased until it reached $2,000,000 prior to the time of the lease, and which was still further increased at the time of the lease by the issue of $200,000 of stock for the purchase of patents, making a total capital of $2,200,000, and that it had a net earning capacity of nine and one-half per cent. per annum, increased to about eleven and one-half per cent. per annum by the purchase of patents hereinafter mentioned, on which the company had been paying nearly $50,000 per annum royalty, and that it had a business which indicated a healthy growth. Its earnings were made by operating lines of sleeping cars extending from New York, Philadelphia, Baltimore and Washington to Chicago and St. Louis. There were sixteen written contracts with different railroads, covering the operation of most of these lines, but not all of them, as a few lines were operated without any written contract with the railroads over which they extended. Pullman's Palace Car Company had been incorporated in 1867 with a capital of $1,250,000, subsequently increased to $1,750,000, and with net receipts equal to thirteen per cent. per annum. It operated lines under contracts with railroads mostly north and west of Chicago, and extending to the Pacific coast; but it had no means of reaching Philadelphia, Baltimore or Washington from the West, and its only means of reaching New York was by the Grand Trunk and Michigan Central Railroad to

Buffalo and the Delaware, Lackawanna and Western Railroad to New York. Its cars were superior in comfort and safety to those of the Central Transportation Company, and this fact affected travel on the lines of the latter company, especially those over the Pennsylvania Railroad and its affiliated companies. In addition to this, the entire condition of sleeping-car transportation at that time was unsatisfactory. Passengers were obliged to change cars at points where the two systems came in contact with each other. The Pennsylvania Railroad and the roads forming its system could not make contracts with Pullman's Palace Car Company because of the existing contracts with the Central Transportation Company. There was pending litigation between the two companies, the Central Transportation Company claiming that the Pullman Company had infringed its patents. Under these conditions it appeared to be desirable, in the interests of both the sleeping-car companies, the railroads and the public that a consolidation of the two companies should be effected. Negotiations resulted in: (1) A purchase by the Central Transportation Company of all the patents under which it had been operating at a royalty. To enable this purchase to be made the capital was increased from $2,000,000 to $2,220,000. (2) A lease by the Central Transportation Company to the Pullman Company for ninety-nine years, at a rental of twelve per cent. per annum on $2,220,000, and an assignment by the Central Transportation Company to the Pullman Company of all the former's cars, contracts and patents. (3) A contract between the Pullman Company and the Pennsylvania Railroad Company whereby the various contracts under which the Central Transportation Company had been operating lines over the roads comprising the Pennsylvania system were exchanged for a single fifteen-year contract in the name of the Pullman Company. This contract allowed the equipment to be made up in part of the old Central Transportation Company cars and in part of new cars to be furnished by the Pullman Company, the railroad undertaking to place the old cars in first-class condition.

To obtain legislative authority for the lease by one sleeping-car company to the other, the counsel for the Pennsylvania

Railroad Company prepared a statute, which was passed by the Pennsylvania Legislature, intended to authorize the lease, extend the corporate existence of the Central Transportation Company for ninety-nine years and authorize the issue of $200,000 of new stock. The effect of these agreements, as stated by the Master, was: "The Pennsylvania Railroad "obtained forthwith, for its entire system, Pullman cars and "Pullman connections; agreeing, however, to accept, as a "part of its new equipment, old cars of the Central Transpor- "tation Company, which were to be put in first-class condi- "tion. The Central Transportation Company was thus saved "from an expenditure necessary to provide a proper equip- "ment of cars and better service, which, under other circum- "stances, would have been unavoidable, and received at once "a sum exceeding its then earning power by about one-half of "one per cent., and which payment, it was anticipated, it "would continue to receive. An harmonious system of sleep- "ing-car transportation was thereby established, extending "from the Atlantic to the Pacific, the receipts of which, it was "believed, would be sufficiently large to secure the continu- "ous payment of the above rental, and also to insure greater "prospective value to the Central Transportation Company's "shares. The Pullman Company acquired an entrance to the "principal cities of the Atlantic seaboard by favored routes. "It at once took the place of the Central Transportation "Company on the Pennsylvania lines, so called, for fifteen "years, and also on the lines of all other railroad companies "covered by the assigned contracts of the Central Transpor- "tation Company; and there was thus established reciprocal "relations, which have, for the most part, since continued. It "attained an ascendency in the sleeping-car business which "has never since been disputed, as well as a monopoly of a "most valuable territory for fifteen years."

The Master further reported that in all of the sixteen contracts between the various railroads and the Central Transportation Company the railroads were to furnish fuel and light, and keep the cars in good order and condition, and in some of them the railroads undertook to renew worn-out parts. Some of the contracts expired at definite dates, others ran for

the life of the patents previously taken out. Six of them ran "during the continuance of the incorporation of" the Central Transportation Company. The Master held that this included the continued corporate existence under the statute subsequently passed, extending the corporate life of the Central Transportation Company beyond the original limit of its charter. After the execution of the lease to the Pullman Company, some of the contracts were replaced by new ones taken in the name of the Pullman Company, and some were canceled. The Master further reported that at the time of the lease the rolling stock of the Central Transportation Company consisted of about one hundred and nineteen cars and their equipments, of which the total cost was about $950,000, and the value at the time of the lease about $712,000, and that the Pullman Company had actually received from various railroads, in settlement of cars retired or destroyed, $556,-933.61, and had on hand thirty-three cars. The Master reported, however, that, on account of the peculiar nature of the contracts, it was, in his judgment, impossible to correctly value the cars, apart from the obligations to maintain and use them set forth in the contracts. The Master further reported that the value of the patents was $266,000—that being the price paid for them at the time of the lease. He further reported that it was impossible to make a separate appraisal or valuation of the contracts, owing to their peculiar nature and varying terms of duration. The Master then proceeded to report the value of the property taken as a whole. He found that there were three measures of value, which served to check or verify each other, viz.: (1) The testimony of a witness who knew the property well, who was competent to appraise it, and who estimated it to be worth at least $3,300,000. (2) The market value of the stock of the company at the time of the lease, which was between $2,464,000 and $2,640,-000. (3) The earning capacity of the property taken in connection with the probable amount to be put aside to restore the capital on a fair expectancy of probable life, and this value the Master estimated as at least fifty dollars per share. The Master then reported as follows: "The several forms of "valuation above considered may be summed up as follows:

"If Torrey's valuation is to be adopted, the capital stock of "the company was worth about seventy-five dollars a share. "If the public estimate is to be adopted, the stock was worth "from fifty-six dollars to sixty dollars a share. If the esti- "mate predicated on earnings, coupled with probable life, is "to be adopted, the stock was worth at least fifty dollars a "share. The two latter estimates serve to verify each other, "and to indicate that Torrey's testimony is excessive. They "are both so far below the capitalized value of the rental "agreed to be paid by the Pullman Company that either of "them, if accepted, would leave a large margin for the illegal "consideration which the court has directed shall be excluded "from the account. Which of the two is to be preferred? "And, if the price of the stock on the street is to be accepted "as the measure of value of the property when transferred, "what figure is to be adopted? The estimate of probable life "is hypothetical. The value of the stock on the street is a "positive indication of the estimate placed on the property by "the public. That it is not entirely a satisfactory measure of "value must be conceded, but in the judgment of the Master, "supported as it is by the best independent estimate that the "evidence affords, it should be accepted as the fairest criterion "of value. This amount has, according to the testimony, been "placed at from fifty-six dollars to sixty dollars a share; and, "whilst the evidence as to these values is not as satisfactory as "the Master would wish, it is nevertheless uncontradicted. As "between the two quotations above named, which indicate "the fluctuations of the stock in value, the Master has taken "the average, or, in other words, a valuation of fifty-eight "dollars a share. This, he believes, is as fair and equitable a "valuation as is possible, under the testimony; and he ac- "cordingly reports the value of the property, when received, "is by him appraised at fifty-eight dollars a share, or $2,552,- "000." With regard to the earnings of the property after it had been delivered under the lease, the Master reported: "An "accurate ascertainment of the earnings, without further evi- "dence than that which has been produced before the Master, "is impossible. The plant, upon the execution of the lease, "became absorbed in a system in which the elements of new

"contracts, additional cars and added lines entered so largely "that, from the evidence presented, it is not possible to dis- "tinguish accurately the earnings applicable to the property "assigned. General results, therefore, can only be ascer- "tained." The Master then proceeded to discuss the contentions of the respective parties as to the earnings, under certain statements which had been produced, and held that neither estimate was satisfactory or complete. He then reported as follows: "The Pullman Company has failed, though requested "by the Master, to furnish him with such information, which "would, he believed, have enabled him to state an account. In "so doing it has doubtless conformed to what its counsel have "advised as the true interpretation of the order of reference, "but the testimony furnished has not been sufficient to make it "possible for the Master to comply with the directions of the "court, as they are understood by him; and he accordingly is "compelled to report that he has not as yet been furnished "with sufficient data to enable him to ascertain the difference "between the rental paid to the Central Transportation Com- "pany from January 1st, 1870, to January 1st, 1885, and "the receipts derived by the Pullman Company from its use "of the property transferred during the period above re- "ferred to."

Both parties filed exceptions to this report. The Pullman Company prefaced its exceptions by a protest that the Central Transportation Company was not entitled to any recovery, and that the Pullman Company was protected by the Statute of Limitations. The exceptions, which were voluminous, covered substantially three objections, viz.: (1) That the Pullman Company was not accountable for the intangible property, such as contracts, &c.; (2) that the valuation was too high; (3) that the rents paid more than compensated for all the property received. There were numerous other exceptions to matters of detail, but the above comprehended the substantial objections. The exceptions of the Central Transportation Company were to the refusal of the Master to find that the property was worth at least $3,000,000, and his failure to report that the failure of the Pullman Company to furnish the information necessary to state an account of earnings entitled

the Central Transportation Company to a decree for the value of the property, without reference to the earnings. On the argument the Central Transportation Company, for the purpose of avoiding delay, offered to waive any claim for excess of earnings over the rental paid, and asked for a decree for the value of the property, with interest from the time when the Pullman Company repudiated the lease.

A. H. Wintersteen, Robert T. Lincoln and Edward S. Isham, for Pullman's Palace Car Company.

The contract under which the property was delivered having been adjudged void, the courts will leave the parties where they have placed themselves; and there can be, therefore, no recovery by the Central Transportation Company. The Pullman Company, if liable at all, was only liable for the property which was susceptible of manual transfer and physical delivery, to wit, the cars and equipments. The lease being void, so also was the assignment of contracts to the Pullman Company, and the Pullman Company therefore acquired nothing by the contracts. It was the duty of the Central Transportation Company to reassert its rights and take possession of the property, and its passivity and acquiescence in the situation were equally illegal with the lease itself. A party cannot recover for an injury which it was in his own power to prevent (Sedg. Dam., sections 201, 202; Loker vs. Damon, 17 Pick., 288; Dodd vs. Jones, 137 Mass., 323; U. S. vs. Smith, 94 U. S., 218), nor for an injury which it was its social duty to avoid (Miller vs. Mariners' Church, 7 Me., 51). And no fiduciary relation could arise out of the mere possession and use of the property. Root vs. Railway Co., 105 U. S., 215; Monk vs. Harper, 3 Edw. Ch., 111; Doyle vs. Murphy, 22 Ill., 508; Wilson vs. Kirby, 88 Ill., 572. The valuation of the Master is excessive, because it capitalizes the earning producing capacity of the plant, when the Central Transportation Company has received the earnings in the rental, and also because it includes the franchise of the corporation, which still exists. The legislature could not, by extending the corporate existence, extend a contract which would otherwise have expired at the end of the original incorporation.

Frank P. Prichard and John G. Johnson, for Central Transportation Company.

If the Master erred in his valuation, the error was in favor of the Pullman Company. A competent witness appraised the plant as worth at least $3,000,000. It was earning eight per cent. on this value, and with every prospect of increasing business. No witness was called by the Pullman Company to contradict this by any other appraisement of the plant as a whole. The Master cut down this appraisement to $2,552,000, the selling value of the stock. If this is to be changed it should, under the evidence, be raised, not lowered. The plant leased, consisting of cars, contracts, patents, &c., was absorbed by the Pullman Company into a new system, and its identity so destroyed by the establishment of new lines that it is impossible to separate or restore it, or even to identify its

earnings. The Pullman Company has refused to furnish the information necessary to state an account, but there is sufficient evidence to raise almost a conclusive presumption that, up to the time when the Pullman Company repudiated the lease, the earnings were far more than the rental paid. Under the circumstances, the Central Transportation Company ought not to be put to the delay of another accounting; and, if it is willing to waive any claim for excess of earnings, it is entitled to a decree for the value of the property which the Pullman Company has appropriated.

Before DALLAS, Circuit Judge, and BUTLER, District Judge.

BUTLER, D. J.

The Master was appointed in pursuance of the opinion filed December 18th, 1894, to ascertain the value of the property transferred and the amount of its earnings. He has found the value to be $2,552,000, and reports that no estimate of earnings can be made from the data furnished; that "the Pullman "Company failed to produce (though requested to do so) evi- "dence in its possession which he believes would have enabled "him to state an account." Although both parties filed exceptions the Transportation Company now seeks a decree for the $2,552,000, with interest from January 1st, 1885, when payment of rent ceased—waiving its claim to earnings to avoid (as it asserts) further delay in obtaining a settlement. The Pullman Company stands on its exceptions, claiming, in substance, first, that it is not accountable for the intangible property, such as contracts with railroads, patent rights, &c.; second, that the valuation is too high; and third, that the rents paid more than compensate for all the property received.

The matter embraced in the first exception is covered by the opinion under which the Master was appointed. It is not too late, however, to revive the question and continue the discussion; but we do not desire to add materially to what has been said. The argument drawn from the invalidity of the lease—that this instrument did not transfer this description of property—seems to be fallacious. The lease did not transfer any description of property. It was ineffectual for every purpose. The acts of the parties, however, transferred the property—the intangible as fully and effectually as all other. The counsel say no railway contracts valid "and obli- "gatory in favor of the Pullman Company, upon the railways, "during the original or the extended life of the Central Com- "pany, or during the continuance of any patent rights, original

"or extended, or for any other period whatever, were ever re-
"ceived by the Pullman Company. The Central Company
"had definite contract rights for fixed and long periods of
"time, and enforceable against the railway companies. The
"Pullman Company did not acquire those, and the Central
"Company did not 'part with' them. The Pullman Com-
"pany got nothing enforceable upon the railways, either
"specially or by damages. It acquired at best but a pre-
" carious *status*, terminable and destructible at any moment
"by the Central Company itself or by the State. The at-
"tempted assignments passed no title and no legal rights
"whatever."

This view was presented with force and earnestness. But the obvious answer is that the Pullman Company got the use and benefit of these contracts as completely as it did that of all other property named in the lease, operated its cars under them in some instances, in others surrendered them and obtained new contracts, in pursuance of the rights which they secured, and thus acquired complete possession of the Transportation Company's business, which it still holds and enjoys. It is of no consequence that the railroad companies *might* have refused recognition of the Pullman Company; they did not. Like the parties to the lease, they believed it to be valid, treated the Pullman Company as lawful owner of the contracts, and accorded to it all the rights they secured. To say that the Transportation Company might immediately have resumed possession of the contracts and continued the prosecution of its business, signifies nothing material to the circumstances. The same might as justly be said respecting the cars and other tangible property. It is not true, however, that the possession might have been so resumed. The Pullman Company would not have allowed it; and although the lease might have eventually been declared void, the property and business would have been absorbed in the meantime. Both parties firmly believed the lease to be valid; they were so instructed by eminent counsel, and were therefore justified in the belief. It was not until after the lapse of many years, when the property was irretrievably lost to the Transportation Company, that it had cause to doubt the validity of the lease.

It must not therefore be visited with knowledge of the invalidity, and the consequences of such knowledge, until the Pullman Company changed its position and raised the question. To hold otherwise would work manifest injustice, by allowing the latter company, after standing on the lease until it had absorbed the property and business, to turn about and say, We had no right to it; you should not have permitted us to take it, and you therefore have no right to complain.

As respects the second exception, we think the valuation is not unjust to the Pullman Company. The assertion that it includes the value of the Transportation Company's franchise is not well founded. It is true that the property is valued at its worth to the latter company, in view of the right to use it as the company did. This right the Pullman Company could exercise by virtue of its own franchise, and did not, therefore, need the Transportation Company's. The value of the property to the Transportation Company and to the Pullman Company was, therefore, what the former lost and the latter gained by the transfer. If the latter's gain was less than the former's loss, this might be, possibly, the proper measure of compensation. There is no evidence, however, that it was less; the indications are that it was not. If it was less the Pullman Company could have shown it. The Transportation Company's franchise was simply rendered valueless by the transfer of its property. Its business was thus lost and its power to establish another destroyed.

As respects the third exception, we think the inference that the earnings were equal to the rent paid is reasonable, if not unavoidable. If they were not, the Pullman Company, having possession of the evidence, could have shown it. The testimony produced by the Transportation Company was quite sufficient to put the burden on the other side. The failure to respond to the Master's request greatly strengthens the inference. It is urged, however, that if the Pullman Company is charged with the property as of 1870, it must be treated thereafter as entitled to the earnings, and be credited with the amount subsequently paid as rent. Of course, if it is treated as owner from that date, it could not justly be held accountable for earnings thereafter, and would be liable only for the

value, with interest from that date, subject to the credit stated. But it is not so treated, and cannot be, because it would not correspond with the facts and would be unjust. The ownership of the property remained in the Transportation Company, the Pullman Company taking possession and holding it for the former, paying a stipulated price for its use up to 1885. The lease under which the parties acted was void, but this did not render the parties' acts void. They chose to, and did, treat it as valid, and to the extent that its provisions were executed the court will not interfere, except to prevent manifest injustice. Up to 1885 they were executed; the Pullman Company got and enjoyed the use and paid the stipulated price. Inasmuch, however, as the enjoyment of the use was granted, and the rent was paid therefor, in contemplation of a longer continuance of the arrangement, it was supposed that the rent might fall short of a just compensation for the use, or be in excess of such compensation. This was, therefore, considered a proper subject of inquiry. It is plain, however, that the parties substantially intended that the use and the rent should balance each other; and, in the absence of proof to the contrary, it should be presumed they did. It was not, therefore, until 1885, when the Pullman Company ceased to pay rent, and repudiated the arrangement, that it became practically responsible for the return of the property, or the payment of its value. Of course, it may be said that such responsibility actually existed from the beginning because the arrangement was unlawful. The parties, however, did not so understand, and treated it as lawful; and to the extent of what they thus did in good faith their acts will not be disturbed. It is too late now to treat the responsibility as existing in 1870, and make settlement accordingly. It would not only be in conflict with the facts, but would work manifest and very great injustice. It would enable the Pullman Company to set up the Statute of Limitations, as it did before the Master; and, if this failed, then to take the property for less than it agreed to pay and did pay (interest considered), substantially as compensation for fifteen years of its use. It is the value of the property at the time it should have been returned that the Pullman Company should be charged with.

Inasmuch as this value would be difficult of ascertainment by the Transportation Company except by reference to the value in 1870, it was considered proper to direct the inquiry to the latter date. Presumably the value increased; the evidence fully justifies the presumption. If it decreased the Pullman Company could and should have shown it. The Master's valuation in 1870 is therefore to be taken as the value in 1885, when the property should have been returned. The payment of this sum, with interest from January 1st, 1885, seems necessary to a just settlement—treating the value of the use and the rents paid prior to that date as balancing each other.

A decree may be prepared accordingly, dismissing the exceptions and confirming the report.

DALLAS, C. J.

I concur in the foregoing opinion, and deem it unnecessary to further extend the discussion of the questions with which it deals; but may add that the result arrived at by the Master seems to me to be quite as favorable to the Pullman Company as, upon any possible view of the facts and the law, could reasonably have been reached.

ASSIGNMENT OF ERRORS FILED BY APPELLANT.

1. The court erred in denying the motion of the complainant in the original bill to dismiss the said bill.

2. The court erred in refusing to dismiss the original bill on the motion of the complainant therein.

3. The court erred in allowing the motion of defendant in the original bill for leave to file the cross bill in this cause.

4. The court erred in permitting the defendant in the original bill to file the cross bill which was filed in this cause.

5. The court erred in overruling the demurrers of the complainant in the original bill which were filed to said cross bill by said complainant.

6. The court erred in taking cognizance as a court of equity of the subject matter of said cross bill.

7. The court erred in holding that the subject matter of the said cross bill, being matter of a purely legal nature, and of the enforcement of a purely legal right, was not excluded from the cognizance of equity by the force of the seventh amendment to the Constitution of the United States.

8. The court erred in not holding that the subject matter of said cross bill was the proper subject matter of action at law only and of trial at law and by jury, both under the provisions of the seventh amendment of the Constitution of the United States and of section 723 of the Revised Statutes of the United States.

9. The court erred in rendering the opinion and in entering the order which was entered on the eighteenth day of December, 1894, in which the said cause was referred to the Master in Chancery, and in the directions to said Master and the other provisions contained in said order.

10. The court erred in holding in said order that under the circumstances stated in said cross bill the complainant therein was entitled either to any decree for the restoration of property delivered to the cross defendant in performance of the terms and for the purposes of the contract of lease dated the seventeenth day of February, 1870, and mentioned in said cross bill, and which is stated therein to have been illegal and void by the Supreme Court of the United States, or any affirmative intervention of the court whatever on behalf of the said cross complainant.

11. The court erred in holding that any property was ever transferred to or was ever received by the Pullman Company, the cross defendant, under the void lease of 1870 aforesaid, except such corporeal and tangible property as was susceptible of physical and manual delivery, and of an actual change of possession, even though such transfer and change of possession might be unauthorized or in violation of law.

12. The court erred in holding that the contracts of the Central Transportation Company with various railway companies mentioned in the pleadings in the original and cross cause, and the patent rights also mentioned therein and in the said opinion and order of the said court entered on the said eighteenth day of December, 1894, and in the said contract of lease, constituted " property " which was transferred to and received by said cross defendant under said void lease; and in holding that said cross defendant is bound to restore or pay the value of said contracts and patents.

13. The court erred in holding that by force of any assignment or assignments, under said lease or otherwise, that there was ever any transfer by the cross complainant to the cross defendant of any incorporeal and intangible rights created by contract or otherwise; and in holding that any transfer of such incorporeal rights or property could occur except by or in accordance with the operation of law; and in holding that any transfer of such rights or property made by or for the purpose of the void lease was made effectual by operation of law, so as to make the cross defendant lawfully responsible therefor, or holden to make compensation therefor.

14. The court erred in holding that a transfer of such incorporeal and intangible corporate rights could be made effectual by the act of the parties, although contrary to law, so as to enable the cross defendant to be clothed with said rights and the power to exercise them and dispose of them, and so as to make said cross defendant lawfully chargeable therewith under said cross bill and responsible therefor.

15. The court erred in holding that the contracts made subsequent to the making of said void lease, and which were made between the said cross defendant and the Pennsylvania Railroad Company, or other railroad companies, were made in exchange for, or in substitution for, the said railway contracts purporting to have been assigned to said cross defendant by the cross complainant by or for the purposes of said void lease, so as to give rise to any rights of the Central Transportation

Company therein, either by subrogation or derived in any other way, through assignments made for the purpose of said void lease, or by acts of the parties.

16. The court erred in holding that the Central Transportation Company transferred to the Pullman Company its property and business, including all the incorporeal and intangible contract rights and patents, as well as its cars and other tangible property, and that the Pullman Company "took possession "of the property and the business transferred, consolidating it "with its own;" and that "the property and the business" of the Central Transportation Company were completely merged in the property and the business of the Pullman Company as the parties intended when executing the void lease; and that it had "become incorporated with the business "and property of the" cross defendant, and that compensation must therefore be made.

17. The court erred in holding that the measure of compensation to be made in such case was the value of the property, including therein the tangible and intangible property of the Central Transportation Company and its business at the time the same purported to have been transferred, in pursuance of the void lease, together with its earnings since, less the amount paid as rent.

18. The court erred in holding that the said cross defendant should pay to the said cross complainant the value of said property when transferred, and did not thereby become the owner of the property so paid for, but that the same remained the property of the said cross complainant, and that it remained entitled to the earnings made by the use of said property.

19. The court erred in rendering the opinion and judgments contained therein, which it rendered and entered on the thirteenth day of January, 1896.

20. The court erred in overruling each of the exceptions of the cross defendant to the report filed in this cause by Theodore M. Etting, Esq., Master in Chancery, and in dismissing the same and each of them.

21. The court erred in confirming the report of the Master filed and made in this court.

22. The court erred in holding that the cross defendant had refused or neglected to furnish statements and produce in evidence before the Master all the earnings called for by the order of reference to the Master, and in holding that the cross defendant had failed or refused to disclose any earnings called for by the Master under the authority of and in pursuance of the order of reference.

23. The court erred in holding that the finding of the Master was correct; that certain railway contracts belonging to the Central Transportation Company, and which were originally made to continue "during the continuance of incorporation" of the Central Transportation Company, were continued in force and extended for the period of ninety-nine years by force of the Act of the Legislature of the State of Pennsylvania of the 9th of February, A. D. 1870, by which the said Transportation Company was given a corporate life for a period of ninety-nine years from the time of the expiration of its then existing charter; and the court erred in not holding that such effect of the said legislative Act of the 9th of February, 1870, was in conflict with and would be forbidden by article I., section 10, of the Constitution of the United States, which prohibits on the part of the States any enactment impairing the obligation of contracts.

24. The court erred in holding that the Master was entitled to call under his order of reference upon the cross defendant for statements of earnings made after the expiration according to their original terms, of railway contracts made to continue during the incorporation of the Central Transportation Company.

25. The court erred in holding that the valuation of the property made by the Master as of 1870 was a measure of the value of the said property so valued in 1885, and in holding that the value in 1885 was presumably greater of such property than in 1870.

26. The court erred in holding that the cross complainant was entitled to recover the value of the property assumed to have been transferred in 1870, and the earnings of the property from that time until the lease was declared void by the cross defendant, and then interest thereafter on the amount of said valuation.

27. The court erred in holding that it would treat the said void contract of lease as executed "up to 1885," and that "to "the extent its provisions were executed, the court will not in- "terfere," and in confining the provisions so treated as executed to the reception of earnings on the one hand by the cross defendant, and of the reserved rental under the lease by the cross complainant on the other, and in not holding that other matters were equally executed, and that during that period prior to 1885 all the assigned railway contracts had expired and no longer existed, and had no value whatever, because they had been used up and exhausted in making the earnings to which the court holds the cross complainant to be entitled.

28. The court erred in confirming the valuation made by the Master of the property alleged to have been transferred to and received by the cross defendant in 1870, because the said valuation was made by the Master upon an unlawful and improper basis, namely, the market value of the shares of the capital stock of the Central Transportation Company, and equalled the value so ascertained of the entire capital stock of the said Transportation Company, whereas such valuation necessarily included elements of value to the Transportation Company which it could not assign and transfer, and also unlawful elements for which no consideration could lawfully be recovered.

29. The court erred in making and entering the final decree in this cause.

ARGUMENT.

Out of the twenty-nine assignments of error filed by appellant in this case there are but three which purport to relate to any question which under the Act of March 3d, 1891, would give this court jurisdiction to entertain an appeal. These three assignments are as follows:—

7. The court erred in holding that the subject matter of the said cross bill, being matter of a purely legal nature, and of the enforcement of a purely legal right, was not excluded from the cognizance of equity by the force of the seventh amendment to the Constitution of the United States.

8. The court erred in not holding that the subject matter of said cross bill was the proper subject matter of action at law only, and of trial at law and by jury, both under the provisions of the seventh amendment of the Constitution of the United States and of section 723 of the Revised Statutes of the United States.

23. The court erred in holding that the finding of the Master was correct; that certain railway contracts belonging to the Central Transportation Company, and which were originally made to continue "during the continuance of incorporation" of the Central Transportation Company, were continued in force and extended for the period of ninety-nine years by force of the Act of the Legislature of the State of Pennsylvania of the 9th of February, A. D. 1870, by which the said Transportation Company was given a corporate life for the period of ninety-nine years from the time of the expiration of its then existing charter; and the court erred in not holding that such effect of the said legislative Act of the 9th of February, 1870, was in conflict with and would be forbidden by article I., section 10, of the Constitution of the United States, which prohibits on the part of the States any enactment impairing the obligation of contracts.

It will be seen that these assignments raise but two questions, viz.:—

1. Whether the decision of the Circuit Court that, under the general principles of equity jurisprudence, the case was one in which the respondent was entitled to affirmative relief by cross bill, was the deprivation of a constitutional right of complainant to a jury trial, which gave complainant a right to appeal directly to the Supreme Court of the United States instead of to the Circuit Court of Appeals.

2. Whether the decision of the Circuit Court that, in valuing some of the contracts of a corporation which by their terms were to continue "during the continuance of the incorporation," such contracts were to be construed as continuing during an extension of the term of the charter by a statute not referring to the contracts, involved any question as to the constitutionality of the statute which would give the parties a right to appeal to the Supreme Court of the United States instead of to the Circuit Court of Appeals.

These questions will be considered separately, but before discussing them it may be well to cite the portion of the Act of March 3d, 1891, and of the Constitution of the United States, upon which the appellant has based its claim to an appeal to this court:—

ACT MARCH 3D, 1891.

SEC. 5. That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases:—

In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision.

From the final sentences and decrees in prize causes.

In case of conviction of a capital or otherwise infamous crime.

In any case that involves the construction or application of the Constitution of the United States.

In any case in which the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority is drawn in question.

In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

Nothing in this Act shall affect the jurisdiction of the Supreme Court in cases appealed from the highest court of a State nor the construction of the statute providing for review of such cases.

CONSTITUTION OF THE UNITED STATES, SEVENTH AMENDMENT.

In suits at common law where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

As to the first question :—

WHETHER THE DECISION OF THE CIRCUIT COURT THAT, UNDER THE GENERAL PRINCIPLES OF EQUITY JURISPRUDENCE, THE CASE WAS ONE IN WHICH THE RESPONDENT WAS ENTITLED TO AFFIRMATIVE RELIEF BY CROSS BILL, WAS THE DEPRIVATION OF A CONSTITUTIONAL RIGHT OF COMPLAINANT TO A JURY TRIAL, WHICH GAVE COMPLAINANT A RIGHT TO APPEAL DIRECTLY TO THE SUPREME COURT OF THE UNITED STATES INSTEAD OF TO THE CIRCUIT COURT OF APPEALS.

In the court below the question arose in this way. Pullman's Palace Car Company had originally filed a bill in equity asserting that its lease from the Central Transportation Company was not in force for the reason, *inter alia*, that it was *ultra vires* and against public policy, and further averring that the interference of a court of equity was necessary to state an account and fix the compensation for such property of the Central Transportation Company as was in the hands of Pullman's Palace Car Company and could not be returned, the language of the bill being as follows (Record, pages 20 and 21, folios 29-31) :—

And your orator shows that in said lease it is recited that the said contract of lease is made on the part of the defendant, the said Central Transportation Company, under an Act of the General Assembly of the Commonwealth of Pennsylvania therein named, approved the ninth day of February, A. D. 1870, a copy whereof is hereto attached, marked "Exhibit G," and referred to as a part of this bill; but your orator is advised, and therefore submits it to the court, that the said lease, being a grant, assignment and transfer of all the property, contracts and rights of the said defendant, the Central Transportation Company, and including a covenant on the part of said defendant corporation not to transact, during the existence of said lease, any of the business for the transaction of which it was incorporated, was never legally valid between the parties thereto, but was void for the want of authority and corporate power on the part of defendant to make the said contract of lease, and because the same was in violation of the charter conferring the corporate powers of said defendant, and of the purpose of its incorporation, as by the said charter, to which, for greater certainty, reference is made, your orator is advised it will appear; that the said contract of lease was never susceptible of being enforced in law by your orator against said defendant, and cannot, therefore, be construed and held to continue in force and

obligatory upon your orator; and that your orator can be under no other legal obligation or equitable duty to the defendant than to return such of the property assumed to be demised as is capable of being returned, and to make just compensation for such other of the said property as, under the said contract of lease, it ought to make compensation for, which it is willing and now offers to do. * * *

That the court may consider and decree whether said contract of lease was not made without authority of law on the part of the defendant, and in excess of its corporate powers, and in violation of its corporate duties, so as not to be enforceable against your orator beyond the obligation of your orator to make return of or just compensation for the property demised; and that an account may be taken between your orator and the defendant, and that the amount may be ascertained that should be paid by your orator to the defendant on any account whatever.

Under this bill Pullman's Palace Car Company obtained an injunction against further suits at law under the lease, and a large amount of testimony was taken which would be useful to both sides on the question of account. After the Supreme Court of the United States had affirmed a decision that the lease was void for the reasons given in the bill, Pullman's Palace Car Company sought to withdraw its bill, and the Central Transportation Company asked leave to file a cross bill. The question was argued, first on the respective motions to withdraw the original and to file the cross bill, and afterwards on demurrers filed to the cross bill for want of equity. (Record, pages 551 to 553, folios 1011 to 1017, and pages 558 to 562, folios 1025 to 1036.)

The Central Transportation Company was allowed to file its cross bill and the demurrers to this bill were overruled. (Record, page 552, folio 1015, and page 562, folio 1035.) The case then proceeded to final hearing, and resulted in a decree in favor of the Central Transportation Company. Pullman's Palace Car Company now seeks to maintain an appeal to this court upon the ground that the effect of allowing the cross bill was to deprive the original complainant of a right of trial by jury, and that therefore a constitutional question was necessarily involved.

The fallacy of the appellant's contention lies in the assumption that whenever the result of a decision is to deprive a party of an opportunity to try a question before a jury, a con-

stitutional question is necessarily involved. There are many decisions which do not involve constitutional questions but which indirectly take away the right of trial by jury. Whenever at common law the court sustains a demurrer to the declaration or complaint or directs a verdict, and whenever in equity the court overrules a demurrer based on want of equity or the existence of an adequate remedy at law, the result is the taking away of the opportunity to try before a jury; but such decisions are in no proper sense decisions of constitutional questions. The seventh amendment to the Constitution of the United States merely "preserves" the "right of trial by jury" "in suits at common law," and if under the application of the principles of common law or of equity as they existed at the time of the adoption of the Constitution the right to a jury trial does not exist, the constitutional provision has no application. It may be said that if the court errs in interpreting or applying these principles of common law or equity the result is a deprivation of the constitutional right, but this is an indirect result, not arising from an erroneous decision of the constitutional question, but an erroneous decision on the other questions of general jurisprudence, and the remedy for such erroneous decision on the general principles of law is by appeal to the Circuit Court of Appeals, to whom is given the decision of questions not constitutional. To hold otherwise would be to give a right to appeal directly to the Supreme Court of the United States wherever the effect of the decision below was to eliminate a jury trial, a result never contemplated by the Act of March 3d, 1891.

The decisions of this court have been in entire accord with the principles above suggested. In the case of—

In re Lennon, 150 U. S., 393 (1893),

a railroad company filed a bill in the United States Circuit Court, and obtained an injunction to restrain another railroad company from refusing to receive its cars. Subsequently the defendant company applied for an attachment against some of its employees who had refused to haul the cars of the plaintiff company. One of the employees after hearing was fined and committed. He applied to the same court for a writ of *habeas*

corpus, on the ground that as he was not a party to the original cause the court had no jurisdiction over him. The court denied the application and dismissed the petition. The employee thereupon appealed to the Supreme Court of the United States, and attempted to sustain his appeal on the theory that he had been deprived of his liberty without due process of law. The Supreme Court dismissed his appeal, saying (the Chief Justice delivering the opinion):—

"Nor can the attempt be successfully made to bring the "case within the class of cases in which the construction or "application of the Constitution is involved in the sense of "the statute on the contention that the petitioner was de- "prived of his liberty without due process of law. The "petitioner does not proceed on any such theory, but entirely "on the ground of want of jurisdiction in the prior case over "the subject matter and over the person of petitioner in re- "spect of inquiry into which the jurisdiction of the Circuit "Court was sought. If, in the opinion of that court, the re- "straining order had been absolutely void or the petitioner "were not bound by it, he would have been discharged, not "because he would otherwise be deprived of due process, but "because of the invalidity of the proceedings for want of "jurisdiction. The opinion of the Circuit Court was that "jurisdiction in the prior suit and proceedings existed, and the "discharge was refused, but an appeal from that judgment "directly to this court would not, therefore, be on the ground "that the application of the Constitution was involved as a "consequence of an alleged erroneous determination of the "questions actually put in issue by the petitioner."

In the case of—

Treat Mfg. Co. *vs.* Standard Steel & Iron Co., 157 U. S., 674 (1895),

the action was at common law, and the court below directed a verdict for defendant. An appeal was taken directly to the Supreme Court of the United States, but this appeal was, on motion, dismissed, the court (the Chief Justice delivering the opinion) saying:—

This was an action of trespass on the case. At the conclusion of the trial the defendants moved the court to charge the jury to find the issues for defendants, which motion was granted, and the jury was directed upon the whole case to return a verdict for defendants, plaintiff duly excepting. Thereupon the jury returned a verdict accordingly; plaintiff moved for a new trial, which was denied, and judgment was given against plaintiff on the verdict. This judgment was rendered December 3d, 1890. The writ of error from this court was brought November 24th, 1891. The only ground relied on to sustain the jurisdiction of this court is that the case "involves the construction or application of "the Constitution of the United States," because plaintiff in error was deprived of the right of trial by jury. But it is well settled that where the trial judge is satisfied upon the evidence that the plaintiff is not entitled to recover, and that a verdict, if rendered for plaintiff, must be set aside, the court may instruct the jury to find for the defendant. Grand Chute *vs.* Winegar, 15 Wall, 355; Marion County *vs.* Clark, 94 U. S., 278; Herbert *vs.* Butler, 97 U. S., 319. *If the court errs as matter of law in so doing the remedy lies in a review in the appropriate court.*

In the case of—

Iowa Central Ry. Co. *vs.* State of Iowa, 160 U. S., 389 (1896),

the Attorney-General of the State of Iowa filed a petition in the Supreme Court of Iowa praying for a mandatory order on the Iowa Central Railway Company to operate a certain portion of its road in compliance with a decree made against another corporation. The Iowa Central Railway Company filed an answer denying that it was a party to the suit in which the decree had been made, and that it was liable to perform the decree. The railway company also filed a demand for a jury trial. The court granted the mandatory order, whereupon the railway company took a writ of error to the Supreme Court of the United States on the ground that the summary proceedings against it was in violation of rights guaranteed by the Constitution of the United States. The Supreme Court of the United States dismissed the writ of error for want of jurisdiction, saying (Mr. Justice White delivering the opinion):—

It is manifest that it was never contemplated by the framers of the Constitution that this court should sit in review, as an appellate court, of such a question as that presented by the record in the case at bar, viz., whether or not the highest court of a State erred in holding that it could

rightfully determine, from the statements in the pleadings filed by both parties to a controversy pending before it, that the averments of an answer set forth no defense to the claim of the plaintiff.

It was not a denial of a right protected by the Constitution of the United States to refuse a jury trial, even though it were clearly erroneous to construe the laws of the State as justifying the refusal. Brooks *vs.* Missouri, 124 U. S., 394; 8 Sup. Ct., 443; *Ex parte* Spies, 123 U. S., 131, 166.

In the case of—

Smith *vs.* McKay, 161 U. S., 355 (1896),

a bill in equity was filed in the Circuit Court of the United States for the District of Massachusetts. Respondents filed an answer averring that complainant, so far as he had any just cause of action, had a plain, adequate and complete remedy at law, and moved on this ground to dismiss the bill. This motion was denied, and the cause proceeded to a final decree in favor of complainant. Respondent thereupon took an appeal directly to the Supreme Court of the United States. The latter court dismissed the appeal, saying (Mr. Justice Shiras delivering the opinion):—

It is further contended by the appellee that this appeal should be dismissed because there is no right of appeal to this court in such a case as the present one.

The appellants claim that this appeal is within the first class under section 5 of the Judiciary Act of March 3d, 1891, providing that "in any "case in which the question of the jurisdiction of the court is in issue, "in such case the question of jurisdiction alone shall be certified to the "Supreme Court from the court below for decision."

The position of the appellee is that only questions of Federal jurisdiction can be brought directly here; that, if the Circuit Court has jurisdiction of the parties and of the matters in dispute, the fact that it is contended that it has no jurisdiction on its equity side raises no question of jurisdiction, within the meaning of the Act under which this appeal is taken; and that whether a case has been made out by the plaintiff in equity or at law is not a question that puts in issue the jurisdiction of the court, in the sense in which that phrase is used in the Judiciary Act. The question thus raised has never been directly decided by this court. It did present itself in the case of World's Columbian Exposition Case, 18 U. S. App., 42; 6 C. C. A., 58; 56 Fed., 654. That was a case in which the Circuit Court of the United States for the Northern District of Illinois had granted, at the suit of the United States, an injunction against the World's Columbian Exposition, a corporation of the State of Illinois, restraining the defendant from opening the exposition grounds or buildings to the public on Sunday. From this decree an appeal was taken to

the Circuit Court of Appeals for the Seventh Circuit, and that court, speaking through Chief Justice Fuller presiding, stated and disposed of the question as follows:—

"The appellees have submitted a motion to dismiss the appeal upon "the grounds that the jurisdiction of the Circuit Court was in issue; "that the case involved the construction or application of the Constitu- "tion of the United States; that the constitutionality of laws of the "United States was drawn in question therein; that therefore the ap- "peal from a final decree would lie to the Supreme Court of the United "States, and not to this court; and hence that this appeal, which is "from an interlocutory order, cannot be maintained under the seventh "section of the Judiciary Act of March 3d, 1891.

"We do not understand that the power of the Circuit Court to hear "and determine the cause was denied, but that the appellants con- "tended that the United States had not, by their bill, made a case prop- "erly cognizable in a court of equity. The objection was the want of "equity, and not the want of power. The jurisdiction of the Circuit "Court was therefore not in issue, within the intent and meaning of the "Act."

We regard this as a sound exposition of the law, and, applied to the case now in hand, it demands a dismissal of the appeal on the ground that the objection was not to the want of power in the Circuit Court to entertain the suit, but to the want of equity in the complainant's bill. The appellants' contention in this respect would require us to entertain an appeal from the Circuit Court in every case in equity in which the defendant should choose to file a demurrer to the bill on the ground that there was a remedy at law.

When the requisite citizenship of the parties appears, and the subject matter is such that the Circuit Court is competent to deal with it, the jurisdiction of that court attaches; and whether the court should sustain the complainant's prayer for equitable relief, or should dismiss the bill with leave to bring an action at law, either would be a valid exercise of jurisdiction. If any error were committed in the exercise of such jurisdiction, it could only be remedied by an appeal to the Circuit Court of Appeals.

The learned counsel for the appellants claims in his brief that the case of Mississippi Mills *vs.* Cohn, 150 U. S., 202, sustains his present contention.

That was an appeal from the Circuit Court of the United States for the Western District of Louisiana, under the provisions of the Act of February 25th, 1889 (25 Stat., 693, ch. 36). The court below dismissed the complainant's bill in equity on the ground that no relief could be had in equity because, under the practice prescribed by a State law, there was a remedy by an action at law. But this court held that the jurisdiction of Federal courts, sitting as courts of equity, cannot be enlarged or diminished by State legislation, and that hence the Circuit Court had committed error by allowing a State law to overturn the well-settled

practice in the Federal court. In the condition of the Federal statutes at that time there was no Circuit Court of Appeals, and the plaintiff's remedy, given him by the Act of February 25th, 1889, was by appeal to this court. Should such a state of facts again arise, the remedy would now be by appeal to the Circuit Court of Appeals.

Applying the principles laid down in these cases to the present case, the conclusion is inevitable that the appeal should be dismissed. The decree below sustaining the cross bill was not based on the decision of any constitutional question, but on the decision of the question whether under the well-settled principles of equity jurisprudence the respondent was entitled to equitable relief under a cross bill. If the court below erred in the decision of that question, the remedy under the Act of March 3d, 1891, was by appeal to the Circuit Court of Appeals, and not to the Supreme Court of the United States.

As to the second question :—

WHETHER THE DECISION OF THE CIRCUIT COURT THAT IN VALUING SOME OF THE CONTRACTS OF A CORPORATION WHICH BY THEIR TERMS WERE TO CONTINUE "DURING THE CONTINUANCE OF "THE INCORPORATION," SUCH CONTRACTS WERE TO BE CONSTRUED AS CONTINUING DURING AN EXTENSION OF THE TERM OF THE CHARTER BY A STATUTE NOT REFERRING TO THE CONTRACTS, INVOLVED ANY QUESTION AS TO THE CONSTITUTIONALITY OF THE STATUTE WHICH WOULD GIVE A RIGHT OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES INSTEAD OF TO THE CIRCUIT COURT OF APPEALS.

This question does not require much argument. The charter of the Central Transportation Company was originally for twenty years, and would have expired in 1882. The Pennsylvania Legislature by a statute (printed in the Record, page 532, folio 973) extended the charter for ninety-seven years. The statute did not in any way refer to existing contracts or attempt to extend them. No question as to the validity or constitutionality of this statute has ever been raised or decided. In the course of the present suit it became necessary to ascertain the value of the original Central Transportation Com-

pany's plant, which at the time of the Pullman lease included various railroad contracts. Some of these contracts were limited to continue "during the continuance of the incorporation" of the Central Transportation Company (Record, page 1144, folio 1944), and in considering their value as a part of the plant the question incidentally arose whether the legal construction of their language was that they were to continue during the corporate life of the Central Transportation Company, or only until the expiration of the period originally named in its charter. The question never was raised by the parties to the contracts, and was only raised in this suit upon the question of the value of the plant. The Master decided that the contracts were to be construed as continuing during the corporate life of the Central Transportation Company, and his report was confirmed by the court. Pullman's Palace Car Company, in order to obtain an appeal to this court, now contend that the effect of the statute in connection with the decision of the Master as to the meaning of the contract was to extend the terms of the original contract, and that therefore the statute impaired the obligation of the contract and was unconstitutional. The statement of this proposition is its best refutation. No question as to the validity of the statute was raised. It did not purport to affect the contracts in any way. The question raised was as to the meaning of the parties to the contracts as interpreted by the language used. This was not a constitutional question and could not justify an appeal to the Supreme Court of the United States.

For the foregoing reasons it is submitted that the appeal should be dismissed.

FRANK P. PRICHARD,
JOHN G. JOHNSON,
For Appellee.